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TRADEMARK AND COPYRIGHT LICENSE AGREEMENT

The parties to this Agreement are NINTENDO COMPANY LTD., a company incorporated in Japan and having its registered office at 60 Fukuine Kamitakamatsu-cho, Higashiyama-ku, Kyoto, Japan, and NINTENDO OF AMERICA INC., a Washington corporation, with its headquarters at 18340 Southcenter Parkway, Seattle, Washington 98188 (hereinafter collectively referred to as "Licensor") and ATARI, INC., a Delaware corporation having it principal place of business at 1265 Borregas Avenue, Sunnyvale, California 94086 (hereinafter referred to as "Licensee").

RECITALS:

1. Licensor is the owner of the trademarks "NINTENDO" "DONKEY KONG" and "DONKEY KONG JUNIOR" ("trademarks") and the copyrighted audiovisual works known as "DONKEY KONG" and "DONKEY KONG JUNIOR", said trademarks and audiovisual works are collectively referred to in this Agreement as the "Donkey Kong Video Works" or "Licensed Products".

2. Licensee desires to obtain an exclusive license to the Donkey Kong Video Works upon the terms and conditions set forth herein,

NOW, THEREFORE, in consideration of the covenants of this Agreement, including the advance non-refundable royalty payment described herein, the parties agree as follows:

1. Grant of Exclusive License. Licensor hereby grants to Licensee an exclusive license to develop, manufacture, sell, distribute, perform, display and publish in the territory hereafter described the Donkey Kong Video Works in cartridge, cassette, diskette or other software media (but excluding cable and telecommunication) for use only in home or personal computers.

(a) As used herein, the term "home or personal computer" is defined as follows: A home or personal computer shall mean a home or personal use microcomputer, programmed by various software media, including cartridges, diskettes and/or cassettes, featuring a built in or interconnected keyboard, capable of accepting input commands from such keyboard or from a joy stick controller or numeric pad, with output capabilities to a monitor or television screen, with off-line memory storage and specifically having the capability for accepting operator programming and direction in the form of higher level source language as well as in object code format, as these terms are defined in paragraph 2(b) of this Agreement. Examples include ATARI 400 and 800, IBM P.C., TRS-80, Commodore VIC-20 and VIC-64 and Apple II, and similar devices of comparable performance. The definition of home or personal computers described herein specifically excludes home video game systems as that term is defined in paragraph 3(a) of this Agreement, such as the ATARI 2600 and 5200, Colecovision 2400 and similar devices of comparable performance.

2. Initial Development Work.

(a) Licensee shall be solely responsible for the initial development of the Donkey Kong Video Works for the use and in the forms described in paragraph 1 of this Agreement. Licensor shall not be obligated to assist or collaborate with Licensee in the development of the Donkey Kong Video Works and it shall not be obligated to disclose, transfer or otherwise provide Licensee with any know-how, data or information concerning the Donkey Kong Video Works. This paragraph is not intended to and does not excuse Licensee's obligations under paragraph 7 of this Agreement ("Quality of Goods/Inspection").

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(b) The software media developed by Licensee shall be distributed in object code format only, specifically excluding the distribution of higher level source language, such as software written in BASIC, and which may be interpreted. "Object code format" is defined as sequences of instructions which can be executed by a computer without intermediate interpretation or translation. Licensee shall also protect the software, to the extent practicable, against illegal copying by the consumer or other persons in the distribution chain, including retailers and distributors. Methods of protection anticipated herein include marking and identification, packaging, distribution controls and state of the art technological and programming barriers to duplication.

(c) At the expiration or termination of this Agreement, Licensee shall certify to the destruction of the source code to the extent such source code makes reference to or displays the distinctive names, characters, or elements associated with the Donkey Kong Video Works.

3. Limitation of License.

(a) The license granted herein does not extend to the development, manufacture or distribution of the Donkey Kong Video Works (in cartridge or cassette form or in some other format) for use other than as described in Section 1 of this Agreement, such as (i) use of the Works in a home video game system, (ii) use of the Works in a table-top game (either for commercial or home use), (iii) use of the Works in a hand-held LCD game (including Licensor's "Game and Watch" products presently marketed worldwide by Licensor) and (iv) use of the Works in coin-operated video amusement games.

As used herein, the term "home video game system" means a home use ROM exchangeable microcomputer system with pre-

programmed programs in the cassette or cartridge form only and dedicated to the game and with an input device (limited to a key switch or joy stick) and with an output device to a television set.

(b) The license granted herein is restricted to Licensee's development, manufacture and sale (for the use described in Section 1 of this Agreement), of specific and existing audiovisual works (i.e., the audiovisual works known as "DONKEY KONG" and "DONKEY KONG JUNIOR"). Nothing contained herein shall authorize Licensee to develop, manufacture or sell any derivative audiovisual work of the Donkey Kong Video Works or to use the NINTENDO, DONKEY KONG or DONKEY KONG JUNIOR trademarks except in connection with such Donkey Kong Video Works. Licensor reserves to itself the right to develop, manufacture, sell and license all derivative audiovisual works of the Donkey Kong Video Works, provided, that Licensee shall have a right of first negotiation to license any such derivative audiovisual work(s) for use in a home or personal computer, as defined herein, for a period of thirty (30) days following Licensor's notice to Licensee of its intent to make public such audiovisual work(s).

(c) Licensor has disclosed to Licensee specific terms of the trademark and copyright license agreements between Licensor and COLECO INDUSTRIES INC. for the development, manufacture and sale of the DONKEY KONG and DONKEY KONG JUNIOR audiovisual works in home video game systems only (and as a tabletop game (DONKEY KONG only)). Licensor and Licensee are also aware of Coleco's announced intent to integrate its home video game system ("ColecoVision") with various components (i.e., keyboard, off-line storage, etc.) which may form a part of a home or personal computer system as that term is defined herein.

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Licensor and Licensee will not consider the use or advertising by Coleco of the Donkey Kong or Donkey Kong Junior audiovisual works in conjunction with such a home or personal computer to constitute an infringement of the license granted herein, provided, that such audiovisual works are produced in ROM cartridge form only and dedicated to the game.

4. Exclusive License/Territory. The license granted to Licensee is exclusive during the term of this Agreement and shall extend to development, manufacture, sale, distribution, performance, display, and publication of the Donkey Kong Video Works (in the forms and for the use described in Section 1 of this Agreement) in all countries of the world.

5. Assignment and Sublicensing. Licensee is not authorized to sell, assign, delegate, sublicense or otherwise transfer or encumber the license granted herein without the prior written consent of Licensor. In the event Licensee is not the manufacturer of the Donkey Kong Video Works, Licensee shall be, subject to the prior written approval of Licensor (which approval shall not be unreasonably withheld), entitled to utilize a third party manufacturer in connection with such manufacture and production, provided that the manufacturer shall execute a letter in the form of Exhibit 1 attached hereto and by this reference made a part hereof and provided further, that such manufactuer shall only have access to the object code format of the software media developed by Licensee. In such event, Licensee shall remain primarily obligated under all of the provisions of this Agreement. This restriction shall not extend to affiliates of Licensee. "Affiliate" shall mean any entity which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Licensee.

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6. Royalties. All royalties payable hereunder shall be allocated between Nintendo Company Ltd., and Nintendo of America Inc., as follows: Nintendo Company Ltd., 80%, Nintendo of America Inc., 20%.

(a) Upon the execution of this Agreement, Licensee shall pay Licensor One Million Dollars ($1,000,000.00) (U.S.), said amount representing an advance non-refundable royalty payment.

(b) In addition, Licensee shall pay Licensor a royalty equal to the greater of (i) ten percent (10%) of the gross sales price or (ii) Two and 40/100 Dollars ($2.40) per Licensed Product in cassette, cartridge or other software media hereafter sold by Licensee, with such payments first credited against the advance non-refundable royalty payment. Eighty percent (80%) of all payments shall be payable to Nintendo Co. Ltd. at its office at 60 Fukuine Kamitakamatsu-cho, Higashiyama-ku, Kyoto, Japan and twenty percent (20%) thereof shall be payable to Nintendo of America Inc. at its office at 18340 Southcenter Parkway, Seattle, Washington 98188. Licensee shall timely withhold and pay federal income tax payable by Nintendo Company Ltd. under the U.S.-Japan Income Tax Treaty upon royalties payable by Licensee to Nintendo Company Ltd. hereunder. Licensee shall provide Nintendo Company Ltd. with copies of IRS Form 1042 and such other documents as may be necessary to evidence withholding and payment at source of such tax. All payments due Licensor under this Agreement shall be paid in U.S. Dollars and shall be remitted by bank draft or check sent registered or certified airmail to Licensor.

(c) Licensee, within thirty (30) days after and as of the end of each calendar quarter of each year during the term of this Agreement, commencing as of the effective date, shall

furnish to Licensor a royalty report specifying: (1) the gross sales (in dollars) of Licensed Products during the preceding calendar quarter; (2) the royalties due Licensor; and (3) the taxes withheld and paid on behalf of Licensor pursuant to this paragraph. Each report so submitted shall be accompanied by the royalty payment due Licensor.

(d) Licensee shall retain, at its principal place of business for a period of two years after making a royalty report, all the records, files and books of account prepared in the normal course of business, which contain data reasonably required for the computation and verification of the amounts to be paid and the information to be given in such royalty report. Licensee shall permit Licensor and/or a licensed CPA (reasonably acceptable to Licensee) to inspect at all reasonable times (not more often than quarterly) and at Licensor's expense, all such records, files and books of account and to take extracts therefrom or make copies thereof for the purpose of verifying the correctness of the royalty payments. Licensee shall give Licensor and/or its CPA such other information as may be necessary and proper to enable the amount of payments payable hereunder to be accurately ascertained. All information obtained by Licensor and/or its CPA from Licensee under this paragraph shall be maintained in strict confidence and shall be subject to the non-disclosure provisions of paragraph 21 of this Agreement ("Confidential Information").

(e) "Gross Sales Price" as used herein shall mean the Licensee's bona fide actual billing price for the Donkey Kong Video Works to Licensee's customers, less customary discounts and allowances actually allowed, less freight or shipping charges which may be included within said selling price, and less any returns and transportation charges allowed on returns. All

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royalties due Licensor shall accrue upon the sale of the Licensed Products, regardless of the time of collection by Licensee. Licensed Products shall be considered sold upon the date when such Products are billed or invoiced, shipped or paid for, whichever event occurs first. If any Licensed Products are consigned to a distributor by Licensee, the Licensed Products shall be considered sold by Licensee upon the date when such Licensed Products are delivered to such distributor. There shall be no deduction from the royalties owed Licensor for uncollectible accounts or for taxes, fees, assessments, or expenses of any kind which may be incurred by Licensee in connection with the royalty payments hereunder. No costs incurred in the manufacture, sale, distribution or exploitation of the Licensed Products, other than as set forth above, shall be deducted from any royalties payable to Licensor.

(f) Licensee shall pay total royalty payments of at least One Million Five Hundred Thousand and No/Dollars ($1,500,000) during the initial term of this Agreement and of at least One Million Five Hundred Thousand and No/Dollars ($1,500,000) during each renewal period of said Agreement. Licensee shall upon the expiration or termination of this Agreement pay Licensor the difference, if any, between the guaranteed royalties set forth herein and the aggregate royalty payments received by Licensor under Sections 6(a) and (b) of this Agreement.

7. Quality of Goods/Inspection. Licensee agrees that the Licensed Products in connection with which the Trademarks are used by Licensee shall be subject to Licensor's approval as to acceptable standards of quality. Licensor and Licensee agree that the quality of Licensee's home computer (Atari Model 400/800) as demonstrated to and approved by Licensor prior

to the execution of this Agreement meets Licensor's standards of quality for the Licensed Products in connection with which the Trademarks will be used by Licensee.

The Licensee agrees to furnish Licensor free of cost for its written approval as to quality and style, samples of each of the Licensed Products together with their packaging and wrapping materials, before their manufacture in production quantities, and no Licensed Product shall be manufactured, sold or distributed by the Licensee without such written approval. If disapproval is not received by Licensee within ten (10) business days after Licensor's receipt of the item submitted for approval, Licensor's approval shall be deemed to have been given, provided however that Licensee shall have notified Licensor by telex or telegram of its failure to disapprove the submitted item(s) upon expiration of the ten day period provided for above. Failure by Licensor to then disapprove (or otherwise comment upon) the submitted item(s) within 48 business hours after receipt by it of said telex or telegram shall be deemed approval of the item(s) so submitted. Subsequent to final approval, a reasonable number of production samples (but in any event not less than six (6)) will periodically be sent to Licensor (at least quarterly) to insure quality control. Licensee shall not be obligated to pay royalty on any licensed products provided to Licensor without cost.

Subject, in each instance, to the prior written approval of Licensor, Licensee may use textual and/or pictorial matter pertaining to the Donkey Kong Video Works as well as the Trademarks on such promotional display and advertising materials as may, in its judgment, promote the sale of the Licensed Products. Any copyrights in textual and/or pictorial matter, to the extent such matter depicts the distinctive names, characters and elements associated with the Donkey Kong Video Works, shall

be the sole and exclusive property of Licensor, and Licensee agrees to acquire from its employees, agents and independent contractors creating such textual and pictorial matter, all such copyrights and then agrees to assign the same to Licensor.

When the Licensee makes reference to the DONKEY KONG or DONKEY KONG JUNIOR audiovisual works in advertising or promotional material, it shall make reference at least once to the following: "Donkey Kong by Nintendo" or "Donkey Kong Junior by Nintendo".

8. Representations and Disclosures.

(a) Of Licensor. Licensor represents and discloses to Licensee as follows:

(i) As of the date of execution of this Agreement Licensor has filed the following trademark applications for the trademarks "NINTENDO" "DONKEY KONG" and "DONKEY KONG JUNIOR": See Exhibit "B."

(ii) As of the date of execution of this Agreement, Licensor has registered the DONKEY KONG and DONKEY KONG JUNIOR audiovisual works for copyright as follows: See Exhibit "C."

(iii) Licensor represents that to the best of its knowledge, the rights represented by the trademarks and copyrights listed above are valid and enforceable.

(iv) Licensor makes no representations as to the existence or availability for trademark or copyright registration of the tradmarks and audiovisual works described herein in countries not listed above, however, Licensor shall use its best efforts to pursue such registrations.

(v) Except as described herein, Licensor is unaware, as of the date of execution of this Agreement, of

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any pending or asserted claim or suit against it which either questions the validity of the trademarks and copyrights described herein or claims that such trademarks or copyrights infringe upon the trademarks or copyrights of any third party. Nintendo Company Ltd. and Nintendo of America Inc. have been named as defendants in Universal City Studios Inc. v. Nintendo Co. Ltd. et al., U.S. District Court for the Southern District of New York, Cause No. 82 Civ. 4259. Licensor has provided Licensee with specific information concerning the status of this litigation including the following disclosure which Licensor's attorneys recently provided Licensor's accountants:

> This case was commenced on June 29, 1982, in the Southern District of New York by Universal City Studios Inc. against Nintendo Co. Ltd. and Nintendo of America Inc. The complaint contains five claims: Claim 1 asserts that the video arcade game named "Donkey Kong" which is assembled and marketed by Nintendo of America Inc. and Nintendo Co. Ltd. infringes trademark rights allegedly held by Universal in the "King Kong" gorilla character, name and visual image of the gorilla atop a building; Claim 2 asserts that Universal owns the name, character and story "King Kong" and that Nintendo of America Inc. and Nintendo Co. Ltd. have infringed trademark rights in the name "King Kong" and in the "King Kong" character and story; Claim 3 asserts that Nintendo of America Inc. and Nintendo Co. Ltd. have violated New York Gen. Bus. Law § 368-d in that they have allegedly diluted the distinct quality of the name, character and visual image of "King Kong"; Claim 4 asserts that the use of the name "Donkey Kong" and sale and distribution of the game constitutes unfair competition and misappropriation of goodwill of Universal; Claim 5 asserts that the use of the name "Donkey Kong" by the Company infringes the trade name of "King Kong."
>
> Universal has made no specific claim for damages, but asserts that it is entitled to an injunction against Nintendo of America Inc. and Nintendo Co. Ltd. prohibiting the use of the name "Donkey Kong", that Nintendo of America Inc. and Nintendo Co. Ltd. deliver up all merchandise containing the name "Donkey Kong" and that Universal have an

accounting for profits arising from the sale of all "Donkey Kong" games and "related merchandise", and that the amounts be trebled. Universal also asks that it be awarded damages for injury to its business and goodwill and for punitive damages under 15 U.S.C. § 1117.

Nintendo of America Inc. and Nintendo Co. Ltd. have denied all material allegations of the complaint. Nintendo of America Inc. has asserted 12 affirmative defenses. Nintendo Co. Ltd. has asserted 14 affirmative defenses. Nintendo of America Inc. has also asserted three counterclaims. The first counterclaim seeks damages, not presently ascertainable, which are due to copyright infringements sanctioned by Universal in connection with manufacture and distribution of an audiovisual game by Tiger Electronics Inc. The second counterclaim asserts damages, not presently ascertainable, for interference with the contractual relations between Nintendo of America Inc., Nintendo Co. Ltd. and their licensee, Coleco Industries, Inc. The third counterclaim asserts that Universal has intentionally induced potential licensees from doing business with the Nintendo of America Inc. which has resulted in damages in an unspecified amount.

Nintendo of America and Nintendo Co. Ltd. intend to contest the case vigorously. Discovery proceedings have just begun. No trial date has been set, although a date for a pretrial order filing of January 24, 1983 has been ordered, and it is not possible at this time to predict the outcome of the litigation nor the amount or range of the potential loss.

(vi) That Licensor has, and will have throughout the term of this Agreement, the sole and exclusive right to license the Donkey Kong Video Works throughout the world in accordance with the terms and conditions of this Agreement.

(vii) The making of this Agreement by Licensor does not violate any agreements, rights or obligations existing between Licensor and any other person, firm or corporation.

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(viii) During the term of this Agreement, Licensor shall not make any agreement with any other person, firm or corporation that is in conflict with this Agreement.

(ix) Licensor has the full right, power and authority to enter into this Agreement, and that it is under no legal prohibition, restraint, or restriction with respect thereto.

(b) Of Licensee. Licensee hereby represents, warrants and covenants as follows:

(i) Licensee has the full right, power and authority to enter into this Agreement, and that it is under no legal prohibition, restraint, or restriction with respect thereto.

(ii) Nothing herein shall give to Licensee any right, title, or interest in or to the Trademarks, except a mere right, privilege, and license, during the term hereof, to display and use the same in accordance with the provisions of this Agreement.

9. Indemnity/Assumption of Risk. Licensor assumes no liabilities to the Licensee or third parties with respect to the performance characteristics of the Donkey Kong Video Works to be developed, manufactured and sold by Licensee under the terms of this Agreement. Licensee agrees to indemnify and hold Licensor harmless against losses incurred through claims of third persons against Licensor involving the manufacture or sale by Licensee of

the Donkey Kong Video Works including, but not limited to, claims of product defect or breach of express or implied warranties. Licensee agrees to obtain at its own expense product liability insurance providing adequate protection for Licensor and Licensee against any claims or suits in amounts not less than $1 million and, within thirty (30) days from the date hereof, Licensee shall submit to Licensor a fully paid policy or certificate of insurance naming Licensor as an insured party, requiring that the insurer not terminate or materially modify such insurance without written notice to Licensor at least twenty (20) days in advance thereof.

Licensor does not make any representations as to the scope or validity of the trademarks or copyrighted materials referred to herein, except as specifically provided for in paragraph 8 hereinabove. The risk that the Donkey Kong Video Works manufactured and sold by Licensee hereunder may infringe upon trademarks or copyrighted materials of others in any part of the Territory covered by this Agreement is expressly assumed by Licensee to the extent it exercises its rights to develop, manufacture, sell, distribute, perform, display and publish the Donkey Kong Video Works.

10. Ownership of Trademarks and Copyrights. Licensee acknowledges that the copyrights and all other proprietary rights in and to the Licensed Products are exclusively owned by and reserved to Licensor. Licensee shall neither acquire nor assert copyright ownership or any other proprietary rights in the Licensed Products or in any derivations (including any source language or object code developed pursuant to paragraph 2 of this Agreement), adaptations or variations thereof. Without in any way limiting the foregoing, Licensee hereby assigns to Licensor all of its worldwide right, title and interest in and to the

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Licensed Products and in any derivations (including any source language or object code developed pursuant to paragraph 2 of this Agreement), adaptations, compilations, collective works, variations and names thereof, heretofore or hereafter created by Licensee or any or its affiliates, embodying the Licensed Products, including any copyrights therein, to the extent such matter depicts the distinctive names, characters and elements associated with the Donkey Kong Video Works.

All copyright registrations with respect to the Licensed Products (including but not limited to registration of the copyright of the audiovisual works to be created by Licensee hereunder) shall be procured for the benefit of Licensor, and either at its direction and expense or at the election of Licensee and at Licensee's expense.

Licensee acknowledges Licensor's exclusive right, title and interest in and to the trademarks described herein and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. In connection with the use of the trademarks and copyrighted materials, Licensee shall not in any manner represent that it has any ownership in the trademarks or copyrighted materials.

Upon termination of this Agreement in the manner provided herein, the Licensee shall thereupon cease and desist from all further use of the trademarks or copyrighted materials in any way, subject to the provisions of paragraph 20 herein. Furthermore, the Licensee will not at any time adopt or use, without Licensor's prior written consent, any word or mark which is likely to be similar to or confusing with the trademarks licensed herein.

11. Copyright and Trademark Notices.

(a) The Licensee shall cause to be displayed or imprinted irremovably and legibly on each Licensed Product manufactured, distributed or sold under this Agreement, including but not limited to audiovisual works created by Licensee or its agents and in all advertising, promotional, packaging and wrapping material and any other such material wherein the trademarks DONKEY KONG or DONKEY KONG JUNIOR or NINTENDO appear, (i) the appropriate copyright notice, including year and "Nintendo of America Inc." in the Western Hemisphere (i.e., North America, Central America, South America, Carribean and all United States islands and territories) and "Nintendo" for products distributed in the rest of the world following an encircled "C", and/or (ii) the initials "TM" as directed in subparagraph (b) hereof, as may be amended from time to time by Licensor. Licensee agrees to deliver to Licensor free of cost six (6) of each of the Licensed Products together with their packaging and wrapping material for trademark registration purposes. Licensee further agrees to provide Licensor with the date of the first use of the Licensed Products in interstate and intrastate commerce.

(b) The appropriate copyright notice is as follows: "c (year) Nintendo of America Inc." for the Western Hemisphere and "c (year) Nintendo" for products distributed in the rest of the world. The year referred to in the copyright notice is the year in which the Licensed Products are first manufactured or the copyright year as provided by Nintendo. The letters "TM" or other trademark notice specified in writing by Licensor shall be placed next to the words "DONKEY KONG" and "DONKEY KONG JUNIOR", and an encircled "R" shall be placed next to "NINTENDO", whenever these words are used on the licensed products and each Licensed Product shall include a notice that these trademarks are licensed

by Nintendo of America Inc. (in the Western Hemisphere) or Nintendo Co. Ltd. (for products distributed outside the Western Hemisphere).

(c) In the event Licensee desires to distribute promotional goods, such as T-shirts, posters or novelties, in connection with its sale of the Licensed Products, Licensee must in advance thereof 1) have approval in writing from Licensor; 2) use Licensor's existing licensees if so directed by Licensor; and 3) meet quality, quantity and distribution controls established by Licensor. All such promotional products must display the trademark of Licensor, as hereinbefore set forth.

12. Trademark and Copyright Enforcement. In the event (1) any claim is asserted against either party hereto alleging that the trademarks or copyrighted materials described herein represent an infringement upon some other trademark or copyrighted material or (2) either party shall discover that Licensor's trademarks and/or copyrighted materials have been infringed upon by a third party, then the party with knowledge of such claim or infringement shall immediately notify the other party.

Upon Licensor's prior written consent (which consent shall not be unreasonably withheld), (i) Licensee may in Licensor's name or in Licensee's name where appropriate oppose applications by others to register and seek cancellation of registration of others of any trademarks which might be confusingly similar to the Trademarks as applied to the Licensed Products, or of any copyrights which might conflict with any copyright of the audiovisual works licensed hereunder, and (ii) Licensee may take action against infringers and apparent infringers of any of the Trademarks as applied to the Licensed Products, or any of the copyrights or any other rights licensed hereunder, in which event

Licensor will provide Licensee cooperation and assistance in taking such actions. Any and all recoveries resulting from actions by Licensee shall be applied first in reimbursement of out-of-pocket expenses incurred in such action, and the balance, if any, shall be divided equally between Licensor and Licensee. This subsection shall not apply in the case of any application for trademark or copyright, or any infringement or apparent infringement that is limited solely to the field of coin-operated devices.

In the event Licensee does not take action against infringers or apparent infringers hereunder, then Licensee shall notify Licensor and Licensor may take such action. Any resultant recoveries shall inure solely to the benefit of Licensor.

13. Notices. Any notice required or permitted to be given under or in connection with this Agreement or the subject matter hereof shall be deemed to have been sufficiently given when, if given to Licensee, it shall be addressed to:

ATARI INC.
1265 Borregas Ave.
Sunnyvale, CA 94086

Attn: Vice President and General Counsel

and when, if given to Licensor, it shall be addressed to:

Manager of Right and Royalty
Nintendo Company Ltd.
60 Fukuine Kamitakamatsu-cho
Higashiyama-ku
Kyoto, Japan

and:

Nintendo of America Inc.
18340 Southcenter Parkway
Seattle, Washington 98188,

with a copy to:

Sax and MacIver
Attn: Howard C. Lincoln
1700 Peoples National Bank Building
Seattle, Washington 98171

and in each case sent by registered airmail or certified airmail, postage prepaid. The date of receipt shall be deemed to be the date on which such notice or request has been given.

14. Waiver/Severability.

(a) The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by such party of any succeeding breach of the same or other provision; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder be construed as a waiver of any such right, power or privilege by such party.

(b) If any term, clause or provisions of this Agreement shall be adjudged invalid, the validity of any other term, clause or provision shall not be affected; and such invalid term, clause or provision shall be deemed deleted from this Agreement.

15. Governing Law. This Agreement shall be governed by and construed, and any claim or controvery arising with respect thereto shall be determined in accordance with the laws of the State of Washington, U.S.A.

16. Attorneys' Fees. In the event it is necessary for either party to this Agreement to employ an attorney to enforce the terms of this Agreement or to file an action to enforce any of the terms, conditions or rights contained herein, or to defend any action, then the prevailing party in any such action shall be entitled to recover from the other all reasonable attorneys' fees, costs and expenses as may be fixed by any court.

17. Term of Agreement. The initial term of this Agreement shall be for five (5) years and shall commence on November 1, 1982 and end on October 31, 1987. Licensor grants Licensee two

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(2) options to renew this Agreement upon the same terms (i.e., five (5) years each) and conditions, provided the terms and conditions herein to be performed by Licensee are duly performed and provided further, that the Licensee shall have given Licensor written notice of at least sixty (60) days prior to the expiration of the then current period of its intention to exercise said option(s) of renewal.

The parties agree that no renewal(s) of this Agreement shall take place unless the royalties accruing and paid hereunder during the initial term of this Agreement and during the first renewal term shall exceed One Million Five Hundred Thousand and No/Dollars ($1,500,000), and One Million Five Hundred Thousand and No/Dollars ($1,500,000), respectively.

18. Marketing Schedule. Licensee shall have begun the regular manufacture and sale of the Licensed Products as follows:

(a) Donkey Kong Video Works for Atari Home or Personal Computers. Licensee shall have begun the regular manufacture and sale of either the Donkey Kong or Donkey Kong Junior Video Works for Atari Home or Personal Computers (i) in the United States and Canada on or before August 1, 1983, and (ii) in the remainder of the Territory on or before January 1, 1984. Licensee shall have begun the regular manufacture and sale of the remaining Donkey Kong Video Works in the Territory prior to July 1, 1985.

(b) Manufacture and Sale of Donkey Kong Video Works for Non-Atari Home or Personal Computers. Licensee shall have accrued gross sales, as defined in paragraph 6(e) herein, of not less than One Million and no/100 Dollars ($1,000,000.00) on the sale of either or both the Donkey Kong and/or Donkey Kong Junior Video Works in cartridge, cassette, diskette or other software media (except cable and telecommunication) for use in non-Atari home or personal computers on or before December 31, 1984.

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Licensee shall have commenced the regular manufacture and sale of both the Donkey Kong and the Donkey Kong Junior Video Works throughout the Territory on or before July 1, 1985.

As used herein, the phrase "regular manufacture and sale" shall mean marketing, advertising and actually distributing the Licensed Products to wholesalers, retailers and/or others in the distribution chain and the availability for purchase of the Licensed Products to the public at large. As used herein, the phrase "remainder of the Territory" shall mean distribution and sale of the Licensed Products in a majority of the countries of the world where home and personal computers are sold to the public at large.

In the event Licensee shall fail to meet the marketing schedule(s) described herein, the Licensor may, at its option, terminate this Agreement with respect to the Licensed Product(s) and territory wherein the breach has occurred, provided, that Licensor shall have given Licensee sixty (60) days written notice of its intention to exercise such option and Licensee shall fail to cure within said period.

19. Termination.

(a) Licensor's Option to Terminate. Licensor shall have the option to terminate this Agreement if the total gross sales of Licensed Products accrued and paid hereunder shall not exceed One Million and No/Dollars ($1,000,000) as of February 1, 1984, provided, that Licensor shall exercise this option by written notice to Licensee within fifteen (15) days after receipt of Licensee's special royalty report for the period ending January 31, 1984, or the same shall lapse.

(b) Licensor's Right to Terminate.

(i) Licensor shall have the right to terminate this Agreement upon the occurrence of any one or more of the following events (herein called "defaults"):

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(A) If Licensee defaults in the performance of any of its obligations provided for in this Agreement, or

(B) The Licensee shall have failed to deliver to Licensor or to maintain in full force and effect the insurance referred to in Paragraph 9 hereof; or

(C) If the Licensee shall fail to make any payment due hereunder on the date due; or

(D) If the Licensee shall fail to deliver any of the statements hereinabove referred to or to give access to the license records pursuant to the provisions hereof to Licensor or Licensor's CPA for the purposes permitted hereunder, and such failure shall continue for ten (10) days after written notice thereof is sent by Licensor to the Licensee; or

(E) If any government agency finds that the Licensed Product(s) are defective in any way, manner or form; or

(F) If the Licensee shall be unable to pay its debts when due, or shall make any assignment for the benefit of creditors, or shall file any petition under the bankruptcy or insolvency laws of any jurisdiction, county or place, or shall have or suffer a receiver or trustee to be appointed for its business or property, or be adjudicated a bankrupt or an insolvent; or

(G) If Licensee shall manufacture, sell or distribute, whichever first occurs, any of the Licensed Products without the prior written approval of Licensor as provided in Paragraph 7 hereof.

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(ii) In the event any of these defaults occur, Licensor shall give notice of termination in writing to Licensee by certified mail. The Licensee shall have forty-five (45) days in which to correct any defaults under subdivisions (A), (B), (C), (D), (F) and (G) above, and six (6) months in which to correct any defaults under subdivision (E) above, and failing such cure this Agreement shall terminate, and any and all payments then or later due from Licensee hereunder shall then be promptly due and payable and no portion of prior payments shall be repayable to Licensee.

20. Disposal of Inventory. Upon the expiration and/or termination of this Agreement, Licensee shall immediately provide Licensor with a true itemized statement of all unsold Donkey Kong Video Works on hand and/or in the process of manufacture at the time of such expiration or termination. Within ten (10) days after receipt thereof, Licensor may notify Licensee that it desires to purchase from Licensee any or all of the unsold Donkey Kong Video Works on hand or in the process of manufacture at the Licensee's lowest distributor cost.

In the event the Licensor shall not exercise its right to purchase any of said Donkey Kong Video Works, then in such event Licensor agrees that at the termination of this Agreement, other than the default by Licensee, the Licensee shall have, for a period of not more than ninety (90) days following such termination, the right to dispose of all of the unsold Donkey Kong Video Games not purchased by Licensor which were on hand or in the process of manufacture prior to such termination; provided, however, that Licensee shall not dispose of said unsold Donkey Kong Video Works or any part thereof until fifteen (15) days after it has given Licensor a true itemized statement of all

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such unsold Donkey Kong Video Games and sufficiently detailed manufacturing information to substantiate applicability of this Section to said games. Licensee shall in accordance with the provisions of this Agreement furnish Licensor with statements with respect to all sales pursuant to the provisions of this Section and shall pay Licensor royalties on all such sales (other than sales to Licensor) in accordance with the provisions of this Agreement. Except as otherwise provided herein, if this Agreement is lawfully terminated by Licensor as a result of any breach of any of its terms and conditions by Licensee, Licensee shall cease and desist from any further manufacture or sale of the Donkey Kong Video Works.

21. Confidential Information. Each party understands that certain information that it may receive from the other party in connection with the performance of this Agreement will be information proprietary to the other party. Such information includes but is not limited to (i) the fact that the other party intends to develop or market the Licensed Products; (ii) nonpublic information concerning the business or finances of the other party; (iii) the terms and existence of this Agreement; (iv) the royalties paid or number of Licensed Products sold; and (v) any other information, the disclosure of which might reduce a competitive advantage of the other party or place the other party at a competitive disadvantage (all of which shall be referred to as "properietary information"). Neither party shall disclose any proprietary information except for the purpose of carrying out this Agreement, and each party shall use its best efforts to prevent the unauthorized disclosure, copying or use of any proprietary information.

The restrictions described herein shall terminate with respect to any particular portion of any proprietary information

which (i) either party is authorized by the other party in writing to disclose, copy or use, (ii) becomes publicly available, or (iii) in the normal routine course of either party's business comes into the possession of such party through source(s) not involving a breach of any confidential relationship with the other party.

22. Official Text. This Agreement may be translated into Japanese for the convenience of the parties, but this English language version is the true and binding agreement between the parties, and in the case of any difference between this version and the translation or modification hereof this version shall prevail.

23. Effective Date: The effective date of this Agreement shall be November 1, 1982.

EXECUTED as of this 5TH day of November, 1982.

NINTENDO CO. LTD.

By _____
H. Yamauchi, President

NINTENDO OF AMERICA INC.

By _____
M. Arakawa, President

ATARI, INC.

By _____
Its SR. V.P. SALES & MKTG.

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EXHIBIT "A"

Dated: _____, 19__

Nintendo Co., Ltd.
Nintento of America Inc.
18340 Southcenter Parkway
Seattle, Washington 98188

Gentlemen:

This letter will serve as notice to you that pursuant to paragraph 5 of the Trademark and Copyright Agreement dated November ___, 1982, between Nintendo Co., Ltd. and Nintendo of America Inc. (Licensor), and Atari, Inc. (Licensee), we have been engaged by Atari, Inc. to manufacture the Licensed Product(s) as defined in the aforesaid Trademark and Copyright Agreement. We acknowledge that we are cognizant of paragraphs 1, 2(b)(c), 3(a)(b), 5, 7, 9, 10, 11, 17, 20 and 21 of said Trademark and Copyright Agreement and we agree to observe those provisions of said Trademark and Copyright Agreement which are applicable to our function as a manufacturer of the Licensed Product(s).

We understand that our engagement as a manufacturer for Atari, Inc. is subject to your written approval. We request, therefore, that you sign in the space below, thereby showing your acceptance of our engagement as aforesaid.

Very truly yours,

_____

By _____
Its _____

AGREED TO AND ACCEPTED:

NINTENDO CO., LTD./NINTENDO OF AMERICA INC.

By _____
Its _____

cc: Atari, Inc.

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EXHIBIT "B"

Trademark Application

"Nintendo"	Japan
	U.S.A.
	Canada
	England
	West Germany
	France
	Italy
	Benelux
	Sweden
	Denmark
	Singapore
	Hong Kong
	Saudi Arabia
	South Africa
"Donkey Kong"	Japan
	U.S.A.
	Canada
	England
	West Germany
	France
	Hong Kong
	Singapore
"Donkey Kong Junior"	Japan
	U.S.A.
	Canada

EXHIBIT "C"

Copyright Registration

Donkey Kong	U.S.A. Canada
Donkey Kong Junior	U.S.A. Canada